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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1998

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

ROBERT JOSEPH TERESINSKI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent, Robert Joseph Teresinski, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the California Supreme Court's decision in this case. The opinion is reported at 26 Cal.3d 457.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Statement of Facts set forth in the Petition for Writ of Certiorari,[1/] with the following additions:

1. Petitioner states that "Officer Rocha stopped the car because he thought its three occupants were all juveniles." (Petition, p. 10;

1. Hereinafter referred to as the "Petition."

emphasis in original.) A more accurate statement is that of the California Supreme Court (Petition, Appendix A, hereinafter "Opinion," p. 2; 26 Cal.3d at 460: "Because of the windshield glare he [Rocha] could not see defendant, the driver, but he thought both passengers were juveniles and surmised that the driver also was a minor."

2. During the time that Rocha observed the car before stopping it, "the car was proceeding at a lawful speed without any suspicious behavior." (Opinion, p. 2; 26 Cal.3d at 460.)

3. Although Rocha stated that his sole reason for stopping the car was that he felt that there was a violation of the Dixon curfew ordinance, he admitted that he did not know the wording of that ordinance. (Clerk's Transcript (hereinafter "CT") at p. 78.)

4. When Rocha examined respondent's driver's license (Petition, p. 12), "the license verified [respondent's] adult status, and in fact only one occupant of the car was a juveinle." (Opinion, p. 3; 26 Cal.3d at 460-61.)

5. When the Dixon police notified the Woodland police of the arrest of respondent and the two passengers, the Woodland police drove to Dixon to pick up the arrested individuals. (CT 83.) The Woodland police brought Mr. Cady, the robbery victim, with them on this trip. (CT 52.) While at the Dixon police station, he saw and identified one of the arrestees. (CT 52.)

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner asks that this Court exercise its jurisdiction under 28 U.S.C. section 1257 (3) on the basis that the present case presents an important federal question. However, it is well settled that where the state court decision is

based on a state law ground which is independently sufficient to uphold the decision, a grant of certiorari is unwarranted, regardless of any federal question presented. (See e.g., Jankovich v. Toll Road Comm'n, 379 U.S. 487, 489 (1964); Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935). The rationale for refusing to review a decision based on an independent state ground, even when there is serious question as to the correctness of an alternate ruling on a federal question, was set forth in Herb v. Pitcaron, 324 U.S. 117, 125-26 (1945):

> "Our only power over the state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion."

We will show below that, regardless of any federal question presented, the decision of the California Supreme Court herein was based upon its binding construction of the California Constitution and that, since there is an adequate and independent state ground for the decision, a writ of certiorari should be denied.

Preliminarily, it must be noted that the California Supreme Court has repeatedly reaffirmed "the authority of the courts of this state to construe provisions of the California Constitution to furnish greater protections to our citizens than do textually parallel provisions of the federal Constitution." (People v. Pettingill, 21 Cal.3d 231, 247 (1978). Article I, section 13 of the California Constitution provides, in part, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated." Although this state constitutional provision is parallel to the Fourth Amendment to the United States Constitution, in a series of

cases the state supreme court has construed it to extend to situations which this Court has held to be outside the ambit of the Fourth Amendment. Compare People v. Blair, 25 Cal.3d 640, 653-55 (1979) with Smith v. Maryland, 442 U.S. 735 (1979); compare People v. Cook, 22 Cal.3d 67, 88 (1978) with Franks v. Maryland, 438 U.S. 154 (1978); compare People v. Maher, 17 Cal.3d 196 (1976), People v. Longwill, 14 Cal.3d 943 (1975), People v. Norman , 14 Cal.3d 929 (1975) and People v. Brisendine, 13 Cal.3d 528 (1975) with United States v. Robinson, 414 U.S. 218 (1973) and Gustafson v. Florida, 414 U.S. 260 (1973).

Thus, the key question is whether in its decision herein the California Supreme Court was relying, at least in part, on Article 1, section 13 of the California Constitution. Unfortunately, the language of the opinion itself sheds little light on the question. The only mention of either the federal or state constitution in the opinion is a passing reference to "the Fourth Amendment." (Opinion, p. 2; 26 Cal.3d at 460.) However, the California court has pointed out that "for the sake of convenience we often refer to constitutional guarantees, both state and federal, against unreasonable searches and seizures under the rubric of "Fourth Amendment' rights." People v. Triggs, 8 Cal.3d 884, 892 n. 5 (1973).

Under such circumstances, we must look to the case upon which the California court relied in reaching its decision herein to determine whether the decision was based on the state constitution. (Cf. Fare v. Michael C. 439 U.S. 1310, 1311 (1978) (Rehnquist, J., granting stay of execution of judgment). As to the validity of the detention, the opinion expressly states (pp. 5-6; 26 Cal.3d at 461-62), and petitioner concedes (Petition, p. 54), that the court based its decision herein on its previous opinion in In re Tony C., 21 Cal.3d 888 (1978). The Tony C. decision, in turn, was grounded upon both the federal and state constitutions, as made clear in

both the majority and minority opinions. (See 21 Cal.3d at 892 and 902, n. 1.) Thus, since Tony C. was based, at least in part, on the California Constitution, and since the decision below was stated to be merely an application of the Tony C. standard to the facts of this case (Opinion, p. 6; 26 Cal.3d at 462), the ruling that the detention was invalid was also grounded on the state constitution.

Having held that the detention was invalid under the state constitution, the remaining issue was the suppression of evidence flowing from that constitutional violation. And, since the detention was held to be in violation of the state constitution, the suppression of evidence was pursuant to the state exclusionary rule used to remedy state constitutional violations. It must be remembered that in People v. Cahan, 44 Cal.2d 434 (1955), California established a state exclusionary rule several years before this Court imposed a federal exclusionary rule on the states in Mapp v. Ohio, 367 U.S. 643 (1961). Not only does the state exclusionary rule predate the federal one, but it also differs in its scope. Thus, the California rule extends to a defendant's assertion of the rights of a third person (People v. Martin, 45 Cal.2d 755 (1955); Kaplan v. Superior Court, 6 Cal.3d 150 (1971)), whereas this Court has declined to adopt a "vicarious exclusionary" rule of this sort under federal law. See e.g., Alderman v. United States, 394 U.S. 165 (1969). Similarly, where this Court has limited the federal rule to exclusion of evidence for use as affirmative proof (Harris v. New York, 401 U.S. 222 (1971)), the California Supreme Court has extended the state exclusionary rule to bar use for impeachment purposes as well. (People v. Disbrow, 16 Cal.3d 101 (1976)).

In short, the decision below embodies the California Supreme Court's definitive ruling both as to whether Officer Rocha's actions violated article 1, section 13 of the California Constitution and as to what the state exclusionary rule requires as a remedy for that violation. Accordingly, regardless of any reliance on federal grounds, there is an adequate and

independent state ground for the court's decision, and thus this Court's exercise of its certiorari jurisdiction would be inappropriate. Jankovich v. Toll Road Comm'n, 379 U.S. 487, 489 (1964).

In addition to the adequate and independent state ground precluding review, the fact that the California Supreme Court's decision is permeated with state law questions makes this case an inappropriate one for this Court's certiorari jurisdiction. For example, a key question was whether respondent's actions fell within the prohibition of the Dixon ordinance, and petitioner devotes a substantial part of its petition to arguing this question. (Petition, pp. 43-57.) However, the California court clearly held that the ordinance did not extend to respondent's actions, (Opinion, pp. 7-10; 26 Cal.3d at 462), and this definitive ruling on a state law question is binding on this Court. Scripto v. Carson, 362 U.S. 207, 210 (1960); General Trading Co. v. State Tax Comm'n, 322 U.S. 335, 337 (1944).

Similarly, petitioner devotes fifteen pages of its petition (pp. 58-72) to urging that the officer's actions should be excused because of his mistake of law. First of all, contrary to petitioner's claim that the state court "failed to determine the reasonableness vel noh of Rocha's interpretation" (Petition, pp. 65-66), the California court expressly held that "in this case the officer's mistake cannot be found reasonable." (Opinion, p. 11; 26 Cal.3d at 463.) Secondly, the state court's determination in this regard to entitled to great weight because 1) it is factually supported by the fact that Officer Rocha did not even know the language of the ordinance which he claimed to be enforcing (CT 78), and that the California Court of Appeal had previously held in a published opinion that an ordinance containing similar language did not prohibit a juvenile driving on a public street (People v. Horton, 14 Cal.App.3d 930, 933 (1971);

and 2) the state high court is best placed to assess the performance of California police officers and to determine what standards of knowledge of California law they can be expected to meet.

CONCLUSION

The California court's decision as to the invalidity of the detention was based on the California Constitution, and its decision as to the evidence to be suppressed was based on the state exclusionary rule. Since there are adequate and independent state grounds to sustain the decision and since in any case the decision is permeated with state law questions, the petition for a writ of certiorari to review the judgment and opinion of the Supreme Court of California should be denied.

DATED: September 22, 1980.

Respectfully submitted,

QUIN DENVIR
State Public Defender

Attorney for Respondent

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MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent, Robert Joseph Teresinski, by and through his counsel, asks leave to file the attached Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of California without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53.

The affidavit of respondent in support of this motion is attached hereto.

Quin Denvir

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State Public Defender

Attorney for Respondent

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AFFIDAVIT

I, ROBERT JOSEPH TERESINSKI, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the respondent in the above-entitled case.

2. I was permitted to proceed in forma pauperis in the trial court, in the California Court of Appeal, and in the California Supreme Court. Because of my poverty I am unable to pay the costs of said case.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said case is briefly stated as follows:

A charge of robbery against me was dismissed by Yolo County, California Superior Court. That dismissal was affirmed by the Supreme Court of California. The present proceeding was commenced by the People of the State of California in a Petition for a Writ of Certiorari to the Supreme Court of California.

Robert Joseph Teresinski

ROBERT JOSEPH TERESINSKI

Duly witnessed and sworn to before me, a Notary Public, this 22nd day of September, 1980.

Erin O'Neill McDermand

Notary Public